95-927

Supreme Court, U.S.
FILED
DEC 13 1995
CLERK

No. _____

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

_____

IN THE MATTER OF A MEMBER OF THE BAR
OF THE SUPREME COURT OF DELAWARE:
SAMUEL L. GUY, ESQUIRE

ON PETITION FOR
A WRIT OF CERTIORARI TO

SUPREME COURT OF THE
STATE OF DELAWARE

PETITION FOR WRIT OF CERTIORARI
VOLUME I(PETITION)

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36 pp

QUESTIONS PRESENTED

Is it a violation of the 1st Amendment for a Delaware attorney who is the President of the Delaware NAACP to be publicly reprimanded for writing a letter petitioning the government(Delaware's Chief Justice) for redress of grievances, including interference with the right to freely associate with the NAACP, and encouraging Delaware's Chief Justice to openly take a position against continued racism in Delaware's legal community?

In the absence of a disciplinary body meeting its burden of proving the falsity and demeaning nature of the contents of a letter to, and only to, Delaware's Chief Justice, can an attorney be publicly reprimanded and ordered to apologize to the Delaware Chief Justice for exercising the 1st Amendment right of freedom of speech and the right to petition government?

Is it a violation of due process for a disciplinary body to schedule a due process hearing and then deny the due process hearing because an attorney did not participate in a pre-hearing conference, despite the absence of actual notice of the pre-hearing conference scheduled on ten days notice at a time when the Board knew that the attorney was in the middle of a Special Election to fill a vacant State Senate seat, and without a finding of willfully failing to participate in the pre-hearing conference?

Does the Delaware Supreme Court have the authority to order an apology under threat of disbarment from an attorney who lawfully exercises his 1st Amendment rights(speech, petition government, freedom of association with the NAACP)?

Is the letter protected by the 1st Amendment as an expression of opinion based on stated facts?

In the absence of a matter

pending before a court, is there a clear and present danger to the administration of justice for an attorney to petition government for redress of grievances by letter to the Chief Justice who is the administrative head of Delaware's court system?

LIST OF PARTIES

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The prosecuting agency before the Board on Professional Responsibility of the Supreme Court of Delaware and before the Delaware Supreme Court is the Office of Disciplinary Counsel. The attorney of record in this case is:

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OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Board On Professional Responsibility appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was September 13, 1995. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

Amendment I-Congress shall make no las respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV Section 1.-All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within

its jurisdiction the equal protection of the laws.

STATUTES AND RULES

Board On Professional Responsibility Rule 15(b)-Except as otherwise provided in these rules, the Superior Court Rules of Civil Procedure apply in disciplinary and disability cases, provided that discovery tights shall not be expanded beyond those provided in Rule 12 hereof.

Delaware Lawyers Rules Professional Conduct Rule 3.5(c)-A lawyer shall not: (c) engage in conduct intended to disrupt a tribunal or engage in undignified or discourteous conduct which is degrading to a tribunal.

Delaware Lawyers Rules Professional Conduct Rule 8.2-A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory

officer or public legal officer, or a candidate for appointment to judicial legal office.

Delaware Lawyers Rules Professional Conduct Rule 8.4(d)-It is professional misconduct for a lawyer to: (d) engage in conduct that is prejudicial to the administration of justice;

Delaware Lawyers Rules Professional Conduct Rule 8.1(b)-An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admission or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

STATEMENT OF THE CASE

Petitioner has been the statewide President of the NAACP since 1992 and served as an attorney for an NAACP branch in Delaware from 1989-1991. Petitioner has been a member of the Delaware Bar since 1989. Beginning in 1991 through to the present, Petitioner provided leadership in Delaware causing unprecedented successes in bringing about diversity in Delaware's legal community. The response of the legal community, including judges, lawyers and the government has been continuous harassment.U.S.C. Amendment I(freedom of association) Petitioner sent a letter to, and only to, Delaware's Chief Justice.Appendix D The letter encourages the Chief Justice to send out a clear anti-discrimination message, and relays to him that in the absence of such the wrong message of tolerance for discrimination will be the message received by many. In addition, the

letter was a formal complaint related to unethical actions on the part of several people and organizations related to the legal community.U.S.C. Amendment I(petition government) The letter expressly relays to the Chief Justice that inherited problems cannot be attributed to him. As the administrative head of the Delaware Court system, he had an obligation to have the contents of my letter investigated. Instead, the Chief Justice joined in with the people who have been wrongfully harassing me and had his clerk instruct the disciplinary counsel to open a disciplinary case against me in violation of my right to petition government for redress of grievances and in violation of my right to free speech.U.S.C. Amendment I

At the time this case began, the Delaware Supreme Court appointed people to sit on the Board on Professional Responsibility. Black members of the Delaware Bar, for all

intents and purposes are not allowed to sit on the Board. As in most areas related to the Delaware legal community, the unwritten rule of law was "no blacks allowed." The Board then hired Disciplinary counsel, the prosecutor in the disciplinary process. So when the Chief Justice's clerk wrote to the Disciplinary Counsel to prosecute me before the Board on Professional Responsibility, there was no way to have a fair and impartial hearing. U.S.C. Amendment XIV Section 1. In fact, the Disciplinary Counsel did everything in his power to prevent the Chief Justice, who made the accusations, from having to testify at the sanctions hearing. I never got to face my accuser, the Chief Justice.

The Board denied me an opportunity to have a due process hearing.U.S.C. Amendment XIV Their justification was my absence from a pre-hearing conference that they scheduled on ten days notice with

full knowledge that I was campaigning in a Special Election for a vacant state senate seat. I never had actual notice of the hearing. This was brought to the Board's attention and a hearing was held. There was no finding that my absence was willful.Appendix B Delaware law and due process does not allow one's right to a hearing to be taken away without such a finding.Board On Professional Responsibility Rule 15(b); Cebenka v. Upjohn Co., Del.Supr., 559 A.2d 1219; Sundor Electric, Inc. v. E.J.T. Construction co., Inc. Del.Supr., 337 A.2d 651. The remedy is rescheduling with costs assessed against the person missing the pre-hearing conference. In Delaware it is common practice to make new laws or not apply the law as it is customarily applied if the object is to "get" a black person who is seeking justice and fairness for all. The Board, with the blessings of the Delaware Supreme, totally

ignored Delaware Supreme Court precedent in order to deny me a due process hearing. On no occasion during the six (6) years I have been an attorney, with constant ongoing harassment from the disciplinary bodies of the Delaware Supreme Court, have they ever scheduled anything on such short notice. Everything, is generally scheduled thirty (30) days in advance.

The Board never made a finding that anything that I said during the proceedings was not true.Appendix B Truth is an absolute defense in 1st Amendment cases.Standing Committee v. Yagman, 55 F.3rd 1430, at 1438(9th Cir. 1995 (Cal.)) In fact, I subpoenaed the Chief Justice and the Clerk of the Supreme Court requesting "with respect to both, please compel the production of every pertinent book, paper and document that demonstrate that the contents of the letter, that is asserted base of this case, contains any statement that is not true."

The Disciplinary Counsel and the Board on Professional Responsibility and the Supreme Court all agreed with the quashing of the subpoenas. This made it impossible for the Chief Justice, the Board, and Disciplinary counsel to prove falsity, an essential element of their case. The aura of being against me caused them to all agree to do something that prevents them from being successful in getting me. The allegations against me never included an accusation that the letter was false because everything in the letter is in fact true. Appendix H; Standing Committee v. Yagman, 55 F.3rd 1430, at 1438(9th Cir. 1995 (Cal.))

There was no court proceeding that was interrupted by the letter I wrote to the Chief Justice.Appendix C,E The actions of the Chief Justice was a direct attempt to interfere with my Freedom of Association with the NAACP and my Freedom of Speech shortly after I

became the statewide president of the NAACP on January 1, 1992.Appendix E; U.S.C. Amendment I Most attorneys would have buckled under with a "gun pointed at their head" and a clear message being received to the effect that if I do not disassociate myself from the NAACP and stop addressing issues related to race, the appointees on the Board and Disciplinary Counsel will try to have me disbarred. This can have a chilling effect on ones 1st Amendment rights.U.S.C. Amendment I; Standing Committee v. Yagman, 55 F.3rd 1430, at 1437-1438(9th Cir. 1995 (Cal.))

None of the four charges levied should be upheld. DLRPC 3.5(c) states that a lawyer shall not engage in undignified or discourteous conduct that is degrading to a tribunal. This provision is facially invalid because it is overbroad and is applied in Delaware without any limiting construction so as not to

interfere with constitutionally protected speech, including the truth when it causes a thinskinned Delaware Chief Justice pain. Standing Committee v. Yagman, 55 F.3rd 1430(9th Cir. 1995 (Cal.)), at 1436-1437 All statements made in the letter must be viewed as true. The disciplinary counsel provided no evidence indicating anything stated was not true despite having the burden of proof to do so. Standing Committee v. Yagman, 55 F.3rd 1430, at 1441(9th Cir. 1995 (Cal.))

DLRPC 8.2 forbids an attorney from making statements with reckless disregard of their truth or falsity concerning the integrity of a judge. The standard to evaluate this is an objective one wherein the court must determine "what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances." The inquiry focuses on whether the attorney had a reasonable factual basis for making

the statements, considering their nature and the context in which they were made. Standing Committee v. Yagman, 55 F.3rd 1430, at 1437(9th Cir. 1995 (Cal.))
The disciplinary did not reach its burden of proof, in fact they provided no factual evidence, to establish the statements made were false. Therefore the statements must be presumed to be true and the truth is an absolute defense. Standing Committee v. Yagman, 55 F.3rd 1430, at 1441(9th Cir. 1995 (Cal.)) On its face it is clear the letter only went to one person, the Chief Justice, and no allegations to the contrary have been made. Appendix D The letter is now available to the public since the Board is required to make it public by issuing a public reprimand. I handled the letter in the appropriate way that a formal complaint should be handled. U.S.C. Amendment I(petition government)

DLRPC 8.4(d) states it is

professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. In this case, the speech was prejudicial to the administration of injustice. Lawyers participating in pending cases may be punished if their out-of-court statements pose merely a "substantial likelihood" of materially prejudicing the fairness of proceedings. Lawyer's statements unrelated to a matter pending before the court may be sanctioned only if they pose a clear and present danger to the administration of justice.U.S.C. Amendment I; Standing Committee v. Yagman, 55 F.3rd 1430, at 1443(9th Cir. 1995 (Cal.)) In this case, there was not a case pending. The letter of October 5, 1992 from Charles Slanina, Disciplinary Counsel, on its face makes this clear. Appendix C,E There was merely an effort to begin an audit using a criteria that had never been used before in an effort

to harass me for the reasons previously stated.

The letter to the Chief Justice can not be the basis for sanctions based on harm to the administration of justice. The letter, that was only sent to the Chief Justice, was the appropriate manner to relay the information to the Chief Justice. Standing Committee v. Yagman, 55 F.3rd 1430, at 1437 -1438(9th Cir. 1995 (Cal.)) In retrospect, petitioner should have publicly blasted the Chief Justice at a press conference regarding the matters in the letter since the Chief Justice obviously did not want the contents of the letter brought to his attention even though he is the appropriate person to receive the information. There was no danger to the administration of justice by sending this letter. There is no need to consider the immediacy and clearness of the danger given the complete absence of any danger. Standing Committee v. Yagman, 55

F.3rd 1430, at 1442-1445(9th Cir. 1995 (Cal.))

DLRPC 8.1(b) states that a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority. Disciplinary Counsel requested my side of the story.Appendix F It was provided.Appendix G My side of the story as outlined in my response was "I would like to know to whom I should forward my letter dated October 7, 1992. It has been explained to me that Justice Veasey had administrative control over the Judicial system." It was further explained that "I will let the decision makers make their decision on this case." Disciplinary Counsel may not like my response, but he does not have the power to make me write the answer he wants written. I was given an opportunity to give my side of the story and I did so in a clear and concise way. In

addition, disciplinary counsel was informed that he should get the case before appropriate decision makers. In addition, I made it clear to the disciplinary counsel that I was being attacked "because I make the truth about the legal system, including the law, accessible to people who they do not want to have access." The truth is a defense to 1st Amendment cases. Between asserting the truth of matters asserted and indicating that the Chief Justice is the administrative head of the Court system responsible to address concerns such as those provided, I feel that I was very responsive. If the Disciplinary Counsel wanted me to inform him that he had the burden of proving the falsity of speech or to educate him on other 1st Amendment matters, I do not believe it is my job to do so. He failed to establish falsity and in fact could not prove the falsity of the statements in the letter to the Chief Justice because everything

was true.

At all stages of the proceedings I have asserted the 1st Amendment and the fact that the Chief Justice is the administrative head of the court system.Appendix A,G,I,J,K,L

REASONS FOR GRANTING THE PETITION

Compelling reasons exist for the exercise of the Court's discretionary jurisdiction

The National importance of this case is the concern best expressed by Justice Black as follows: "An enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more that it would enhance respect." To date the Board on Professional Responsibility nor the Delaware Supreme court has been willing to carefully evaluate this case using 1st Amendment analysis. The reason why they have not is because they know the statistical odds of the U.S. Supreme Court being unwilling to review a case is so enormous that they can disregard the U.S. Constitution and get away with it. The Chief Justice has been successful in interfering with my freedom of association with the

NAACP. Matters of this nature require your review.

This decision is in conflict with the decision of another appellate court, Standing Committee v. Yagman, 55 F.3d 1430(9th Cir. 1995(Cal.)). The Delaware Supreme Court refused to address the merits of any issues in their decision despite the fact that this recent case was placed before them by disciplinary counsel.

The importance of the case to me and others similarly situated is that in America there are still people in power in the legal community who oppress others based upon their race and/or association with the NAACP. There are still people in the legal community across this country who believe it is fashionable to harass attorneys who address racism that currently exists in the legal community. In Delaware there is only one level of appellate review. In Delaware, there are only approximately 700,000 people and

approximately 2,800 lawyers of which only approximately 60 are minority. I am the only attorney in the entire state who is actively involved with the NAACP. Delaware's legal community has harassed me for this reason. I have never been employed as attorney and due to a lack of financial resources, I have never had any support staff to assist me with the modest case load that I do have. Through the leadership I have provided, through the NAACP, many attorneys of color have had the opportunity to be in positions that minorities have never held before. The white controlled legal community has exhibited open hatred towards me because of this. Do to my leadership, minorities for the first time have positions as U.S. Attorney, and as judges on two Courts where minority judges have never served before. Minority lawyers are now having unprecedented opportunities in the private sector and in government. I am proud of

the leadership I have provided in Delaware on this front, but the legal community in Delaware, including the Chief Justice chooses to personally and directly attack me as was done in this case. Your review of this case is requested to put in check Delawareans efforts directed towards a result of silencing me and forcing me to disassociate myself from the NAACP without regard to the law under the U.S. Constitution that disallows that result. The issue of importance is whether the Constitutional protections supposedly afforded to all citizens can be disregarded if those in power seek an objective of harassing those who do not have power and use the machinery of the government to implement the oppression. Every person involved in processing this case is directly appointed by the Chief Justice and or Supreme Court or by one of the appointees. This case has not been reviewed by anyone

who is not forced by the structure of the disciplinary process to assist the Chief Justice in his personal direct attack upon me. All lawyers similarly situated need to know whether the U.S. Constitution protects us from local and state actions inconsistent with the U.S. Constitution. On a personal level, your decision with regard to whether or not to grant a Writ of Certiorari will determine for me whether as a black man in America, I should have any belief in justice from the judicial branch of government. My belief in Delaware's judicial branch of government as a place where black people can obtain justice is almost completely gone. The absence of any analysis at all on the part of the Delaware Supreme Court is what is most amazing.

The decision of the lower court in my case was erroneous because I was denied an evidentiary hearing to confront my accusers in violation of procedural due process. In

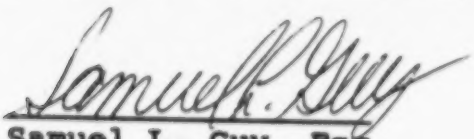
addition, the disciplinary counsel never alleged in the original complaint that the contents of my letter was untrue and disciplinary counsel never presented any evidence that in any way suggests that anything in the letter was untrue. In the absence of such, I can not be found to have violated any of the 1st Amendment related accusations against me. The Court can not presume my letter is untrue. As a matter of law, the contents of my letter must be viewed as true and are in fact true. The Board's Order after the June 13, 1994 on the Motion for a Hearing does not include a finding of "wilfulness." The absence of such a finding, as a matter of law, does not allow the Board to preclude an opportunity to be heard as is required under procedural due process under state and federal constitutional analysis. A default judgment is not the appropriate remedy.U.S.C. Amendment XVI Section 1.; Cebenka v.Upjohn

Co., Del.Supr., 559 A.2d 1219, 1226; Sundor Electric, Inc. v. E.J.T. Construction Co., Inc., Del.Supr., 337 A.2d 651.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Samuel L. Guy, Esq.

Date: December 12, 1995